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EXTRAORDINARY

PART II—Section 3

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 3rd September 1957

S.R.O. 2790-A.—It is hereby notified for general information that the disqualification under clause (c) of section 7 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below as notified under Notification No. MP-P/165/57(53) dated the 13th July, 1957, has been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section of the said Act:—

Shri Sooraj Prasad *alias*,
Surya Prasad,
Madhavganj, Jatavpura,
Eashkar.

[No. MP-P/165/57(R)/378.]

S.R.O. 2790-B.—Whereas the election of Shri Ram Krishan Gupta as a member of the House of the People from the Mohindergarh Constituency of that House, has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (43 of 1951) by Shri Rattan Singh son of Shri Kanshia Ram resident of village Kungar, Tahsil Hansi, District Hissar;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, sent a copy of its order in the said election petition;

Now, therefore, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION PETITION No. 132 OF 1957

Shri Ratan Singh Vs. Shri Ram Kishan Gupta.

ORDER

This is a petition filed by Shri Rattan Singh, an unsuccessful candidate, challenging the election of Shri Ram Kishan Gupta respondent to the Parliament from Mohindergarh Parliamentary Constituency No. 269 (Punjab) and seeking a further relief that the petitioner be declared as the duly elected candidate.

2. It is not necessary to give the grounds on which the election has been challenged. At this stage, it is enough to mention that in the written statement filed by the respondent, a preliminary objection was taken that inasmuch as the petitioner claims a seat for himself in addition to claiming a declaration that the election of the returned candidate is void, he was required to implead all the contesting candidates as respondents, and as the petitioner has impleaded only

the successful candidate as the respondent and has not impleaded the other contesting candidates, this petition deserves dismissal. The other objection raised was, that the petition was not presented within time, as prescribed in section 81 of the Representation of the People Act, 1951 (Act No. XLIII of 1951). As a result of these preliminary objections, the following two issues were settled:—

1. Was the petition presented within the time as prescribed in section 81 of the Representation of the People Act, 1951? If not, should it not be dismissed under sub-section (3) of section 90 of the aforesaid Act?
2. Were Sarvshri Bikram Singh, Ganpat Rai and Manohar Lal or anyone or more of them not necessary parties to be impleaded in the petition as required under sub-clause (a) of section 82 of the Act, if so, what is the effect of petitioner's omission to so impleading?
3. No evidence was led and the arguments were addressed on the facts as are apparent from the record.

4. On issue No. 1 it was urged that the petition was presented on 20th April, 1957 and would be within time, because 19th April, 1957, which was the last date of limitation, under section 81 for the presentation of the petition, was a public holiday. The relevant portion of section 81 runs as follows:—

"An election petition may be presented
..... within forty five days from..... the date of
election of the returned candidate....."

It is provided under section 10 of the General Clauses Act that where anything is directed to be done in any office, within a number of days and the last day falls on a public holiday, when that office is closed, the thing would be deemed to have been done within time, if it is done on the day following the public holiday. It was conceded that 19th of April 1957 was a public holiday and consequently the petition was presented within time on 20th April, 1957. This issue is, therefore, decided accordingly.

5. It was not denied that in addition to the petitioner Shri Ram Kishan and Shri Rattan Singh respondent, there were at least two other contesting candidates Sarvshri Bikram Singh and Ganpat Rai. Shri Manohar Lal was another duly nominated candidate, who, however, did not actually contest the election. It is, therefore, obvious that the petition does suffer from the defect that all the contesting candidates have not been impleaded as respondents. On behalf of the petitioner, it was urged that this defect was not fatal and that the Tribunal could permit the petitioner to implead these respondents even at this stage and in the alternative it was urged that the petition could proceed at least so far as the relief of the declaration of the election of the returned candidate as void, is concerned. On behalf of the respondent, however, it was contended that under the provisions of sub-clause (a) of section 82 it was imperative for the petitioner, where he claims a seat for himself in addition to a declaration that the election of the returned candidate is void, to implead all the contesting candidates as respondents and that his failure to do so is fatal and under sub-section (3) of section 90, the Tribunal has no option but to dismiss an election petition, which fails to comply with the provisions of section 82.

6. Reference on behalf of the petitioner was made to one or two decisions under section 82, as it stood before the Representation of People (Second Amendment) Act, 1956. These decisions are, however, not relevant, because under the law as it stood before the amendment, there was no provision for the dismissal of the petition for non-compliance with the provision that all nominated candidates should be impleaded as respondents. The relevant portion of sub-clause (a) of section 82, as it now stands, runs as follows:—

"A petitioner shall join as respondent to his petition—

- (a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates."

This sub-clause clearly lays down that a petitioner shall implead all the contesting candidates where "in addition to claiming a declaration that the election of the returned candidate is void, claims a further declaration that he himself or any other candidate has been duly elected,"

7. If this provision is not complied with, the penalty is laid down in sub-section (3) of section 90, which runs as follows:—

“The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85.”

The wording of this section is very clear and does not provide for any exception whatever. To allow the petitioner to implead the contesting candidates after the expiry of the period of forty-five days within which a petition has to be presented, would obviously be uncalled for, because by the failure of the petitioner to implead the contesting candidates in time, a very valuable right has come to be vested in the respondent, who has been declared successful in the election. There is also no authority for holding that the Tribunal has power to convert the relief claimed by the petitioner, which falls under the first part of sub-clause (a) to a relief which falls under the second part of that sub-clause, by allowing the petitioner to amend the petition so as to seek only a declaration that the election is void and omit the further relief claimed by him of getting himself declared as duly elected.

8. Having given my best consideration to the matter, I am of the view that the defect of not impleading the contesting candidates is, in view of the provisions of sub-section (3) of section 90 fatal and I have no other option but to dismiss this petition for non-compliance with the provisions of sub-clause (a) of section 82 and I order accordingly. The petitioner will pay the costs of the respondent which, in view of the decision of the petition on a preliminary point, are assessed at Rs. 200 (two hundred).

9. After the arguments on the preliminary issues had been heard but before 30th July, 1957, which was the date fixed for the announcement of the order, two of the contesting candidates; namely Sarvshri Bikram Singh and Ganpat Rai put in applications for being impleaded as respondents under the provisions of sub-section (4) of section 90. These applications were resisted and it was urged that sub-section (4) was inapplicable in a case like the present one, where the petition, as presented, was incompetent and was liable to be dismissed under sub-section (3) of section 90. I have no doubt in my mind that the provisions of sub-section (4) of section 90 come into play only in a case where a petition, as originally presented, fully complies with the provisions of section 82. It is only in such a case that any other respondent, who is not a necessary party under the provisions of section 82 and for that reason has not been impleaded by the petitioner, may apply under sub-section (4) of section 90 to be made a party. In view of the fact that the petition is liable to be dismissed for non-compliance of section 82, these two applications are incompetent and are hereby dismissed. No order as to costs in these applications.

Announced:

ROHTAK, dated August 20, 1957.

(Sd.) HARBANS SINGH,

Election Tribunal.

PRESENT: Shri Ram Kishan—respondent.

(Sd.) HARBANS SINGH,
20th August, 1957.

[No. 82/132/57.]

By Order,

A. KRISHNASWAMY AIYANGAR, Secy.

